

American Federation of Labor and Congress of Industrial Organizations



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Sent via electronic mail: rule-comments@sec.gov

August 8, 2014

Kevin M. O'Neill
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Mr. O'Neill:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I am writing to provide comments on Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank.") Dodd-Frank Section 953(a) requires the Securities and Exchange Commission (the "SEC") to issue a rule requiring public companies to disclose information that shows the relationship between executive compensation and company performance.

The AFL-CIO is the umbrella federation for U.S. labor unions, including 56 unions, representing 12.5 million union members. Union-sponsored and Taft-Hartley pension plans hold more than \$560 billion in assets. Union members also participate directly in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public-sector employers. The retirement savings of America's working families depend, in part, on ensuring that public companies have responsible compensation practices for their chief executive officers.

The SEC Should Implement Dodd-Frank Section 953 As Soon As Practical

We are deeply concerned that four years after the passage of Dodd-Frank many of its executive compensation reforms contained in Subtitle E of Title IX still have not

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been implemented by the SEC. In our view, the Subtitle E provisions of Title IX are a comprehensive and interlocking set of reforms intended to align executive pay with long term company performance. For example, the executive pay disclosures required under Section 953 will help inform Section 951's "say-on-pay" votes.

According to the U.S. Office of Management and Budget's Unified Agenda, the SEC's Division of Corporate Finance is scheduled to recommend proposed rules to implement Section 953(a) by October 2014. A final rule implementing Section 953(b) on pay ratio disclosure is also scheduled for October. We urge the SEC to move forward as rapidly as possible to implement Section 953, as well as the other executive compensation provisions in Subtitle E of Title IX of Dodd-Frank.

Pay for Performance Data Should Supplement the Summary Compensation Table

The SEC's proposed rule to implement Section 953(a) should not alter the Summary Compensation Table as required to be disclosed under Item 402 of Regulation S-K. In its present form, the Summary Compensation Table captures current compensation over a three-year period for the top five named executive officers. Investors rely on the Summary Compensation Table when casting say-on-pay advisory votes, as well as for director elections of compensation committee members.

By requiring disclosure of all forms of executive compensation in a standardized format, the Summary Compensation Table facilitates comparisons between companies and over time. Another important advantage is that it provides investors with a summary of current compensation accrued by senior executives over the fiscal year. This presentation of current compensation over the year in question helps investors evaluate the annual compensation decisions that were made by boards of directors.

"Realized Pay" Does Not Equal "Executive Compensation Actually Paid"

Certain commentators have suggested that the SEC should adopt a "realized pay" approach to satisfy the "executive compensation actually paid" statutory language of Section 953(a). At first glance, a "realized pay" approach sounds attractive. However, while realized pay may be helpful to investors as supplemental disclosure, there are certain fundamental flaws to this approach that make it unsuitable for illustrating the relationship of executive pay to performance.

Most notably, "realized pay" calculations include the value of stock option exercises. However, the year that a stock option is exercised does not reflect the performance period when the option was earned (i.e., its vesting period). In effect, including option exercises in executive pay calculations conflates changes in an

executive's liquid wealth with their income. Such disclosure may also understate executive pay as many stock options are exercised after an executive's termination.

Alternative Pay Formulas Can Dramatically Understate Executive Compensation

In 2013, the Conference Board Working Group on Alternative Pay Disclosure issued a set of recommendations regarding "realized pay" and "realizable pay."¹ Applying these approaches to executive pay at Oracle Corp. illustrates how "realized pay" and "realizable pay" formulas can dramatically understate executive compensation levels compared with the Summary Compensation Table total amounts.

Over the past three fiscal years, Oracle CEO Larry Ellison received a combined total of \$253.3 million according to Oracle's 2013 Summary Compensation Table. But applying the Conference Board's "realized pay" formula for the three year period totals \$200.4 million. The Conference Board's "realizable pay" formula totals just \$140.7 million – \$113 million less than the Summary Compensation Table amount.²

The SEC Should Require Disclosure of Quantifiable Pay-For-Performance Metrics

We urge the SEC to consider the merits of requiring disclosure of quantifiable performance metrics, numerical formulas and payout schedules. Such metrics are routinely used to set executive pay formulas, but they are rarely disclosed on a forward-looking basis. Requiring all companies to disclose this information will neutralize any competitive disadvantage resulting from the disclosure of proprietary information.

To comport with the statutory language of Section 953(a), we also recommend that the SEC require standardized disclosure of Summary Compensation Table data compared to the company's total shareholder return. For example, the SEC could require a comparison of the percentage change in total shareholder return compared to the percentage change in each named executive officers' total compensation.

¹ The Conference Board Working Group on Supplemental Pay Disclosure White Paper, 2013, available at: <http://www.conference-board.org/governance/index.cfm?id=17959>. The "realizable pay" methodology proposed by the Conference Board Working Group would exclude changes in the value of pension/non-qualified deferred compensation and perquisites, as well as sign-on bonuses for new executives, "make whole" and retention awards. This approach would also use the current value of equity awards, instead of the grant date fair value, as estimated using the Black Scholes valuation method.

² Equilar Insight, Pay for Performance Database, available at <https://insight.equilar.com> (subscription required).

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Conclusion

Thank you for taking the AFL-CIO's views into consideration regarding this matter. We look forward to reviewing and commenting on your pending proposal to implement Section 953(a) of Dodd-Frank. If the AFL-CIO can be of further assistance, please contact me at [REDACTED] or [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read 'HSC', written over a horizontal line.

Heather Slavkin Corzo, Director
Office of Investment

HSC/sdw
opeiu # 2, afl-cio